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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,672	10/20/2003	Steven Tsengas	1035	2623

7590 03/30/2005

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EXAMINER

MILLER, WILLIAM L

ART UNIT PAPER NUMBER

3677

DATE MAILED: 03/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/688,672	Applicant(s) TSENGAS, STEVEN	
	Examiner William L. Miller	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-6,8,9,16-24 and 29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-6,8,9,16,17,21-24 and 29 is/are rejected.
- 7) ☒ Claim(s) 18-20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>marked-up Fig. 2 Bussard'717.</u> |

DETAILED ACTION

Election/Restrictions

1. The election of species requirement presented in the previous Office action has been rescinded per the applicant's cancellation of claims 25-28.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 3-6, 8, 9, 16, 17, 21-23, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bussard et al. (US#4884717) in view of Bezek et al. (US#6596328).
4. Bussard discloses in Figs. 1-3 a food dispenser comprising: an enclosed container 12,13 comprising a wide top portion (extending upward from the lowermost groove 18 defining rib) tapering to a narrow base portion 16 (bottom wall), and a central portion therebetween (extending between 16 and lowermost groove defining rib); the top portion comprising a resilient aperture 19; the top portion perimeter (planar uppermost surface of container) encircling a concavity housing the aperture; and at least one item of food 14 capable of being inserted and removed via the aperture. (See marked-up Fig. 2).
5. Bussard fails to disclose a plurality of ribs as claimed by the applicant. Bezek teaches a food container comprising an enclosure 100 including ribs 108 to provide a hand grip for the consumer. Therefore, as taught by Bezek, it would have been obvious to one of ordinary skill in

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the art at the time the invention was made to modify Bussard to include a plurality of ribs to provide a hand grip for the consumer.

6. Regarding claims 5, 6, 9, and 17, the dispenser when inverted from the Fig. 2 orientation, includes the claimed top, base, and central portions, as the lower end (or base) of the inverted dispenser would then include the aperture.

7. Regarding claims 8 and 9, the dispenser is frusto-conical in shape thus having a circular cross-section as opposed to an oval-like cross sectional shape including opposing front and rear walls and opposing lateral sides therebetween as claimed by the applicant. However, the cross-sectional shape of the container is not a critical feature of the invention, and it would have been an obvious design choice to utilize a dispenser having an oval-like cross-sectional shape including opposing front and rear walls and opposing lateral sides therebetween as a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

8. Regarding claim 29, the dispenser is fabricated from a relatively soft, pliable, polymeric material as portion 13 thereof is a resilient plastic (col. 2, lines 57-59).

9. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bussard in view of Bezek, as applied to claims 3, 4, 5, 6, 8, 9, 16, and 17 above, and further in view of Iverson (US#4328904).

10. Bussard fails to disclose the dispenser including a means for securing the dispenser to an object to facilitate transport thereof. Iverson discloses a similar food dispenser 10 (col. 2, lines 7-9) including a means 18 for securing the dispenser to an object to facilitate the transport

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thereof. Therefore, as taught by Iverson, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bussard by including a means for securing the dispenser to an object to facilitate the transport thereof.

Allowable Subject Matter

11. Claims 18-20 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

12. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

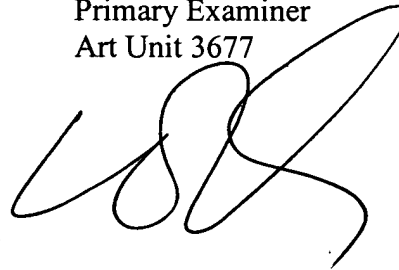
Any inquiry concerning this communication or earlier communications from the examiner should be directed to William L. Miller whose telephone number is 703 305 3978. The examiner can normally be reached on Tuesday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703 306 4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

William L. Miller
Primary Examiner
Art Unit 3677

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end, positioned below the printed name.

WLM